SUPREME COURT, U. S.

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

NO. 1015

WILLIAM C. WITHERSPOON,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS and JOSEPH WOODS, Sheriff of Cook County, Illinois,

Respondents.

(ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS)

PETITION FOR REHEARING BY THE PEOPLE OF THE STATE OF ILLINOIS

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Printed by Authority of the State of Illinois

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I.

THE COURT SHOULD CLARIFY ITS MANDATE SO THAT THERE IS NO DOUBT THAT FUTURE PROCEEDINGS CAN BE HELD.

The Court concluded its opinion in this case with the notation "Reversed". Such a mandate under Illinois law operates as a complete discharge, and additional proceed-

ings are precluded. The opinion however makes it clear that the conviction itself is not rendered invalid (Opinion, Fn. 21), and the Court apparently contemplated that some sort of resentencing procedures would follow.

The People of the State of Illinois would ask therefore that the mandate be changed to read "Reversed and Remanded", so that there is no doubt that future proceedings can be held.

II.

THE COURT SHOULD GRANT A REHEARING TO DETERMINE WHETHER THE DECISION SHOULD BE PROSPECTIVE ONLY.

As was previously noted, the Court sustained the petitioner's conviction but held that the punishment imposed was invalid. In a footnote (No. 22), the decision was made retroactive. It is fair to say that the petitioner, as well as the respondents, was surprised at the result. And well might the petitioner be surprised, since he made no claim in his petition for *certiorari* that the jury was biased on the question of punishment; since the grant of *certiorari* made no mention of jury bias on punishment; since petitioner's brief made no such argument; and since none of the oral argument as such was directed at whether or not the jurors were biased on the question of punishment. As a result the People had no opportunity or reason to anticipate the final decision and the reasons given for that decision. The People are aware that the Court's decisions come after serious deliberation and are not lightly put aside, but as a minimum the People should be allowed to argue that the decision should be prospective only.

At the present time there are approximately twenty-three convicted criminals under sentence of death in Illinois. As is apparent from the figures listed in Respondent Woods' Petition for Rehearing, Illinois prosecutors have requested the death penalty in only the most extreme cases, and accordingly only those who have committed the most heinous crimes are under death sentence. While the convictions of these criminals are still valid under the opinion herein, as a practical matter many of them will have to be tried anew. There has never been any provision in Illinois for separate penalty proceedings, and the Illinois Supreme Court has said in the past that express legislation would be required to establish such. [See *People v. Bernette,* 30 Ill. 2d 359, 197 N.E. 2d 436, 445 (1964)]. The holding of new trials will be a severe burden on Illinois since one trial alone—that of a prison inmate who killed a guard—recently cost the State close to one million dollars. A large portion of this cost was for defense attorneys' fees. [See *People ex rel. Conn.* v. *Randolph,* 35 Ill. 2d 24 (1966)]. In light of the unexpectedness of the decision herein, and in light of the many cases which had approved the practices which now have been condemned [*e.g., Logan* v. *United States,* 144 U.S. 263 (1892); *Turberville* v. *United States,* 303 F. 2d 411 (D.C. Cir. 1962), *cert. den.,* 370 U.S. 946 (1962)], the State of Illinois should be allowed to show the impact of retroactive application and to present arguments showing that the integrity of petitioner's trial was not undermined.

Furthermore, retroactive application of this opinion will not only impose a financial burden on Illinois, but will also result in a flood of new litigation. Some of those now condemned were sentenced to death by the jury alone, as was the practice in Illinois prior to 1962. Others were sentenced under the present statute, which provides that

the jury may recommend the death penalty but only the trial court can impose it. No matter what resentencing procedures are set up for those who will not be completely retried, whether it be by the Legislature or by the Illinois courts, there are sure to be claims in the future that an *ex post facto* law has been passed or that equal protection has been violated. The People should be allowed to show the impact on the administration of justice and to argue for only prospective operation of the rule announced.

CONCLUSION

The Respondent People of the State of Illinois respectfully ask that the Petition for Rehearing be granted and that the ruling be made prospective only. In the alternative, the People ask that the mandate be changed to read "Reversed and Remanded".

Respectfully submitted,

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CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

William G. Clark, Attorney General of the State of Illinois, Counsel for People of the State of Illinois.